

JUDGE CASTEL

09 CIV 6324

09-116

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANN & HOPE, INC., HELEN REALTY CO.,  
SAMUEL N. CHASE, IRWIN CHASE and  
MARJORIE CHASE ALPERT TORGAN,

Plaintiffs,

- against -

FEDERAL INSURANCE COMPANY,

Defendant.

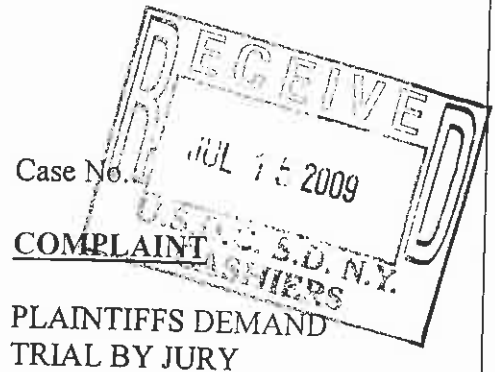
-----X  
Plaintiffs ANN & HOPE, INC., HELEN REALTY CO., SAMUEL N. CHASE, IRWIN  
CHASE and MARJORIE CHASE ALPERT TORGAN, ("Plaintiffs"), by and through their  
attorneys, WEG AND MYERS, P.C., as and for their Complaint allege as follows:

#### NATURE OF THE ACTION

1. Plaintiffs bring this action against defendant FEDERAL INSURANCE COMPANY ("FEDERAL" or "Defendant") for a declaration of Defendant's duty to indemnify Plaintiffs and for breach of contract.
2. This action arises from the failure of FEDERAL to provide Plaintiffs with indemnification pursuant to a policy of insurance issued by Defendant to Plaintiffs.
3. The Policy insures against losses due to crime up to a limit of \$5 million, yet Defendant has denied coverage for at least \$5 million in losses suffered by Plaintiffs as the result of the massive Ponzi scheme perpetrated by Bernard L. Madoff ("Madoff") and his firm Bernard L. Madoff Investment Securities, LLC ("BLMIS")

#### THE PARTIES AND THEIR AFFILIATES

4. At all times hereinafter mentioned, plaintiff ANN & HOPE, INC., was and still is a corporation organized and existing under and by virtue of the laws of the State of Rhode



FACTS

12. ANN & HOPE, INC. is a family operated business that has been involved in the businesses of owning and operating retail stores under brands including Curtain and Bath Outlet, Dollar Outlet and Garden Outlet, as well as owning and operating real estate.

13. ANN & HOPE, INC. affiliate HELEN REALTY CO. is an investment partnership. The members of HELEN REALTY CO. are siblings SAMUEL N. CHASE, IRWIN CHASE and MARJORIE CHASE ALPERT TORGAN.

14. Plaintiff ANN & HOPE, INC., on behalf of itself and its affiliates, purchased the subject ForeFront Portfolio Policy of insurance from defendant FEDERAL, bearing policy number 81849159 (the "Policy"). This Policy includes crime coverage with limits of \$5 million under the Policy Section entitled Crime Coverage Section.

15. Plaintiffs ANN & HOPE, INC., HELEN REALTY CO., SAMUEL N. CHASE, IRWIN CHASE and MARJORIE CHASE ALPERT TORGAN are all insureds on the Crime Coverage Section of the Policy.

16. Between May 1, 2008 and May 1, 2009, inclusive, the Policy was in full force and effect and insured against the unlawful taking of money or securities by a third party, by means including, but not limited to, computer fraud and electronic funds transfer fraud.

17. Plaintiffs are victims of the largest financial fraud in United States history, perpetrated by Madoff and his firm BLMIS. As has since been confessed and known world-wide, in a massive Ponzi scheme, Madoff obtained investors' funds by misrepresenting to them that he was purchasing securities on their behalf. However, no such purchases were made. Rather, Madoff fraudulently diverted the funds, including those of Plaintiffs, for his own uses.

18. Madoff was arrested on December 11, 2008 and thereafter confessed to running a massive Ponzi scheme. In his plea allocution, Madoff testified that he had initiated the Ponzi by at least the early 1990s, when he commenced the unlawful taking of client funds without legitimately investing such funds. Madoff employed, inter alia, electronic funds transfers and computers to accomplish his frauds. On March 12, 2009, Madoff pled guilty to felony counts including, but not limited to, securities fraud, investor advisor fraud, mail fraud, wire fraud, money laundering, false statements and perjury. On June 29, 2009, Madoff was sentenced to 150 years in prison.

19. On or about August 14, 2008, Madoff and BLMIS caused \$5 million to be electronically transferred from Plaintiff HELEN REALTY CO.'s account to Madoff's account at JP Morgan Chase Bank, in furtherance of the Ponzi scheme. Madoff failed to purchase securities for Plaintiffs and none of the subject funds were returned to the Plaintiff insureds. Accordingly, Plaintiffs have suffered a total loss of the funds unlawfully taken by Madoff and/or BLMIS.

20. On or about December 18, 2008, Plaintiffs notified Defendant of a claim pursuant to the Crime Coverage Section of the aforementioned insurance policy for the monetary damages caused by Madoff's theft.

21. On or about April 29, 2009, Plaintiffs submitted a Proof of Loss to Defendant. By letter dated May 12, 2009, Defendant denied Plaintiffs' claim for indemnification. To date, Defendant has failed to indemnify and reimburse Plaintiffs for any of their damages, in contravention of the policy of insurance.

**AS AND FOR A FIRST CLAIM AGAINST FEDERAL INSURANCE CO.**

(Declaratory Judgment – Indemnity)

22. Plaintiffs hereby repeat and reallege each and every allegation contained in paragraphs “1” through “21” inclusive, with the same force and effect as if they were here again fully set forth.

23. Although the claims alleged by Plaintiffs fall within the insuring provisions of FEDERAL’s policy of insurance and despite the fact that the Plaintiffs have fully complied with all of the conditions precedent, FEDERAL has failed to indemnify Plaintiffs for the unlawfully taken funds.

24. Plaintiffs therefore seek relief by way of a declaratory judgment as to the obligation of FEDERAL to indemnify Plaintiffs for the losses pursuant to the coverage provided to them under the Crime Coverage Section of the ForeFront Portfolio Policy issued by FEDERAL to Plaintiffs herein.

**AS AND FOR A SECOND CLAIM AGAINST FEDERAL INSURANCE CO.**

(Breach of Contract)

25. Plaintiffs hereby repeat and reallege each and every allegation contained in paragraphs “1” thorough “24” inclusive, with the same force and effect as if they were here again fully set forth.

26. Plaintiffs have performed all of their obligations pursuant to the Policy and have performed all of the conditions precedent to coverage under the Policy.

27. The monetary damages sustained by Plaintiffs as a result of Madoff’s and/or BLMIS’s unlawful acts are covered losses under the Policy.

28. FEDERAL's failure to indemnify Plaintiffs for the claims asserted concerning the subject loss constitutes a breach of FEDERAL's obligations under the Policy.

29. By reason of that breach, Plaintiffs have been damaged in an amount of money in excess of \$5,000,000.

WHEREFORE, Plaintiffs demand judgment:

(a) against FEDERAL on their First Claim for declaratory relief wherein they seek a declaration that FEDERAL is obligated to indemnify Plaintiffs for their losses pursuant to the terms and conditions of the Policy issued by Defendant to Plaintiffs; and

(b) against FEDERAL on their Second Claim for breach of contract in an amount in excess of \$5 million, together with pre-judgment interest, as well as costs, disbursements and attorney fees incurred herein.

WEG AND MYERS, P.C.

By:

  
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Docket No.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANN & HOPE, INC., HELEN REALTY CO., SAMUEL  
N. CHASE, IRWIN CHASE and MARJORIE CHASE  
ALPERT TORGAN

Plaintiffs

v.

FEDERAL INSURANCE COMPANY,

Defendant

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SUMMONS AND COMPLAINT

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